

United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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JOHN ENGLISH,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

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Transcript of Record.

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Upon Writ of Error to the United States District Court  
of the Southern District of California,  
Southern Division.

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FILED

1923

U.S. DISTRICT COURT



United States  
Circuit Court of Appeals  
For the Ninth Circuit.

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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### **Names and Addresses of Attorneys.**

For Plaintiff in Error:

W. C. BURGESS, Esq., Crocker Building, San Francisco, California.

THOMAS & SULLIVAN, Esqs., Humboldt Bank Building, San Francisco, California.

For Defendant in Error:

JOSEPH C. BURKE, Esq., United States Attorney,

ROBERT CAMARILLO, Esq., Assistant United States Attorney,

HERBERT N. ELLIS, Esq., Assistant United States Attorney,  
Federal Building, Los Angeles, California.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

JOHN ENGLISH,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Writ of Error.**

The United States of America,—ss.

The President of the United States of America, to  
the Honorable the Judges of the District Court  
of the United States for the Southern District  
of California, Northern Division, GREET-  
ING:

Because in the record and proceedings, as also  
in the rendition of the judgment, of a plea which  
is in said District Court before the Honorable  
Oscar A. Trippet, one of you, between John Eng-  
lish, the plaintiff in error, and the United States  
of America, the defendant in error, a manifest  
error hath happened, to the prejudice and great  
damage of the said plaintiff in error, as by his  
complaint and petition herein appears; and we  
being willing that error, if any hath been, should  
be duly corrected, and full and speedy justice done  
to the parties aforesaid in this behalf, do com-  
mand you, if judgment be therein given, that then,  
under your seal, distinctly and openly, you send the  
record and proceedings with all things concerning  
the same, to the United States Circuit Court of Ap-  
peals for the Ninth Circuit, at the City of San Fran-  
cisco, State of California, together with this writ, so  
that you have the same at the said City of San  
Francisco within thirty days from the date hereof,  
in the said Circuit Court of Appeals to be then and  
there held, that the record and proceedings afore-  
said being then and there inspected, the said Cir-

cuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done in the premises.

WITNESS the Honorable WILLIAM HOWARD TAFT, Chief Justice of the United States, this 8th day of July, A. D. 1922, and in the one hundred and forty-sixth year of the Independence of the United States of America.

Attest: CHAS. N. WILLIAMS,  
Clerk of the District Court of the United States  
for the Southern District of California,  
Northern Division.

Allowed by order made this 8th day of July,  
A. D. 1922.

[Seal]

TRIPPET,  
Judge of Said District Court.

I hereby certify that a copy of the within writ of error was on the 8th day of July, 1922, lodged in the office of the Clerk of the said United States District Court, for the Southern District of California, Northern Division, for said Defendants in Error.

CHAS. N. WILLIAMS,  
Clerk U. S. District Court, Southern District of  
California.

By Murray E. Wire,  
Deputy.

[Endorsed]: No. 588. United States Circuit Court of Appeals for the Ninth Circuit. John English, Plaintiff in Error, vs. United States of

America, Defendant in Error. Writ of Error.  
Filed Jul. 8, 1922. Chas. N. Williams, Clerk.  
Murray E. Wire, Deputy.

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In the United States Circuit Court of Appeals for  
the Ninth Circuit.

JOHN ENGLISH,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Citation on Writ of Error.**

United States of America,—ss.

The President of the United States of America,  
to the UNITED STATES OF AMERICA,  
and to JOSEPH C. BURKE, United States  
Attorney for the Southern District of Cali-  
fornia, GREETING:

You are hereby cited and admonished to be and  
appear before the United States Circuit Court of  
Appeals for the Ninth Circuit, at San Francisco,  
in the State of California, within thirty days  
from the date hereof, pursuant to a writ of error  
filed in the clerk's office of the District Court of  
the United States for the Southern District of  
California, Northern Division, wherein the said  
John English is plaintiff in error and the United  
States of America is defendant in error, to show  
cause, if any there be, why the judgment in said

writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

WITNESS the Honorable OSCAR A. TRIPPET, Judge of the District Court of the United States for the Southern District of California, this 8th day of July, A. D. 1922.

TRIPPET,

United States District Judge.

Attest: CHAS. N. WILLIAMS,

Clerk of the United States District Court for the Southern District of California.

Due service and receipt of a copy of the within citation is hereby admitted this 8th day of July, 1922.

JOSEPH C. BURKE,

United States Attorney.

By HERBERT N. ELLIS,

Special Asst. U. S. Atty.

[Endorsed]: No. 588. United States Circuit Court of Appeals for the Ninth Circuit. John English, Plaintiff in Error, vs. United States of America, Defendant in Error. Citation on Writ of Error. Filed Jul. 8, 1922. Chas. N. Williams, Clerk. Murray E. Wire, Deputy.

**Indictment.**

No. \_\_\_\_\_

Filed \_\_\_\_\_

Viol: Section 37, Federal Penal Code. Conspiracy to Violate Section 3, Title II of the National Prohibition Act.

In the District Court of the United States, in and for the Southern District of California, Northern Division.

At a stated term of said court, begun and holden at the City of Fresno, County of Fresno, within and for the Northern Division of the Southern District of California, on the second Monday of November, in the year of our Lord one thousand nine hundred and twenty-one:

The Grand Jurors of the United States of America, selected and sworn, within and for the division and district aforesaid, on their oaths present:

That John English, *alias* John Kelly, George A. Spratt and C. A. Burke, whose full and true names, and the full and true name of each is, other than as herein stated, to the Grand Jurors unknown, hereinafter called the defendants, and various other persons whose names are to the Grand Jurors unknown, on or about the 15th day of December, 1921, at the City of Fresno, County of Fresno, State of California, within the Northern Division of the Southern District of California and within the jurisdiction of the United States and this Honorable Court, did knowingly, willfully, unlawfully, corruptly and feloniously con-



spire, combine, confederate and agree together to commit offenses against the United States, to wit:

(1) That the defendants would sell, at the City of Fresno, County of Fresno, State of California, within the division and district aforesaid, whiskey fit for beverage purposes and containing alcohol in excess of one half of one per cent by volume, and alcohol; contrary to the provisions of Section 3, Title II of the National Prohibition Act of October 28, 1919.

(2) That the defendants would transport for beverage purposes, whiskey and alcohol, in an automobile on the public streets of the City of Fresno, County of Fresno, [1\*] State of California, within the division and district aforesaid; contrary to the provisions of Section 3, Title II of the National Prohibition Act of October 28, 1919.

(3) That the defendants would possess whiskey and alcohol fit for beverage purposes, at the City of Fresno, County of Fresno, State of California, within the division and district aforesaid; contrary to the provisions of Section 3, Title II of the National Prohibition Act of October 28, 1919.

And the said conspiracy, confederation, combination and agreement was continuously, throughout all of the times in this indictment mentioned, in operation and existence.

#### OVERT ACT No. I.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present:

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\*Page-number appearing at foot of page of original certified Transcript of Record.

That in furtherance of said conspiracy, combination, confederation and agreement, and to accomplish the purpose and effect the object thereof, at the city of Fresno, county of Fresno, State of California, on or about the 15th day of December, 1921, said defendants did sell, to such persons who might thereafter desire to procure same, intoxicating liquor fit for beverage purposes then and there containing in excess of one half of one per cent by volume;

#### OVERT ACT No. II.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present:

That in furtherance of said conspiracy, combination, confederation and agreement, and to accomplish the purpose and effect the object thereof, at the city of Fresno, county of Fresno, State of California, on or about the 15th day of December, 1921, the said defendant, John English, *alias* John Kelly, delivered to the office of said defendant, C. A. Burke, in the city of Fresno, a case of intoxicating liquor fit for beverage purposes, then and there containing alcohol in excess of one half of one per cent by volume;

#### OVERT ACT No. III.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: [2]

That in furtherance of said conspiracy, combination, confederation and agreement, and to accomplish the purpose and effect the object thereof, at the city of Fresno, county of Fresno, State of California, on or about the 15th day of December,



1921, said defendant, John English, *alias* John Kelly, transported one case of intoxicating liquor fit for beverage purposes and containing alcohol in excess of one-half of one per cent by volume, over the public streets of the city of Fresno, from the office of said defendant, C. A. Burke, to the home of said defendant George A. Spratt;

OVERT ACT No. IV.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present:

That in furtherance of said conspiracy, combination, confederation and agreement, and to accomplish the purpose and effect the object thereof, at the city of Fresno, county of Fresno, State of California, on or about the 10th day of January, 1922, said defendant, George A. Spratt, sent a telegram addressed to defendant John English at No. 745 Market Street, San Francisco, California, which read, "Can use 10 shares of stock Friday. Spratt."

OVERT ACT No. V.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present:

That in furtherance of said conspiracy, combination, confederation and agreement, and to accomplish the purpose and effect the object thereof, at the city of Fresno, county of Fresno, State of California, on or about the 13th day of January, 1922, the said defendant John English, *alias* John Kelly, drove an automobile, containing intoxicating liquor fit for beverage purposes and containing alcohol in excess of one half of one per cent by volume,

over the streets of the city of Fresno to the home of defendant, George A. Spratt.

OVERT ACT No. VI.

And the Grand Jurors aforesaid, on their oaths aforesaid, do further present: [3]

That in furtherance of said conspiracy, combination, confederation and agreement, and to accomplish the purpose and effect the object thereof, at the city of Fresno, county of Fresno, State of California, on or about the 13th day of January, 1922, the said defendant, C. A. Burke, went to the home of said defendant, George A. Spratt.

Contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States of America.

JOSEPH C. BURKE,

United States Attorney.

HERBERT N. ELLIS,

Special Assistant United States Attorney.

[Indorsed]: No. 588. Crim. United States District Court, Southern District of California, Northern Division. The United States of America vs. John English, *alias* John Kelly, George A. Spratt and C. A. Burke. Indictment. Viol. Sec. 37, F. P. C. Conspiracy to Violate Section 3, Title II, Nat'l Pro. Act. A True Bill. George F. Sharpe, Foreman. Filed this 15th Day of March, A. D. 1922. Chas. N. Williams, Clerk. Bail \$1500. [4]

At a stated term, to wit, the May, A. D. 1922, Term of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the courtroom thereof, in the city of Fresno, on Monday, the first day of May, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH, *alias* JOHN KELLY,  
GEORGE A. SPRATT and C. A. BURKE,  
Defendants.

**Minutes of Court—May 1, 1922—Trial.**

This cause coming on for arraignment and plea of defendants John English, *alias* John Kelly; George A. Spratt and C. A. Burke; H. N. Ellis, Esq., Assistant U. S. Attorney, appearing as counsel for the Government; John English being present in court on bond without an attorney; defendant George A. Spratt being present in court with his attorney, R. K. Stewart, and defendant C. A. Burke being present in court with his attorney C. E. Lindsay, Esq., and defendants having been called and arraigned and required to plead, thereupon defendant John English states his name to

be John English and not John Kelly, and interposes his plea of not guilty; and defendant C. A. Burke thereupon waives the reading of the indictment and states his name to be as therein given and interposes his plea of Not Guilty; it is now by the Court ordered that this cause be continued to the hour of two o'clock P. M., for the entry of plea of defendant George A. Spratt; that this cause be set for trial of defendants John English and C. A. Burke for May 8th, 1922, and that the motion of said C. E. Lindsay, Esq., for severance on behalf of said John English and C. A. Burke be denied; and now, at the hour of two o'clock P. M. this cause coming on for the arraignment and plea of defendant George A. Spratt; H. N. Ellis, Esq., appearing as counsel for the Government and defendant George A. Spratt being present in court with his attorney, R. K. Stewart, Esq., and [5] having been arraigned, thereupon waives the reading of the indictment and states his name to be as therein given; and, upon being required to plead, having interposed his plea of Not Guilty, it is by the Court ordered that this cause be continued to May 8th, 1922, for the trial of defendant George A. Spratt. [6]

At a stated term, to wit, the May, A. D. 1922, Term of the District Court of the United States, within and for the Northern Division of the Southern District of California, held at the courtroom thereof, in the city of Fresno, on Thursday, the 8th day of June, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,  
Plaintiff,

vs.

JOHN ENGLISH, *alias* JOHN KELLY,  
GEORGE A. SPRATT and C. A. BURKE,  
Defendants.

**Minutes of Court—June 8, 1922—Trial (Continued).**

This cause coming on at this time for trial of defendants herein before a jury to be impanelled; John R. Layng, Esq., Assistant U. S. Attorney, appearing as counsel for the Government; defendant John English being present with his attorney W. C. Burgess, Esq.; defendant George A. Spratt being present with his attorney R. K. Stewart, Esq., and defendant C. A. Burke being present with his attorney C. E. Lindsay, Esq., and Eugene Frankenberger being also present as stenographic reporter of the testimony and pro-

ceedings, and counsel for the respective parties having announced their readiness to proceed with the trial of this cause, it is by the Court ordered that this cause be proceeded with and that a jury be impanelled herein; and thereupon the following twelve names were drawn from the jury-box, to wit:

J. D. Stephens; E. A. Walrond; J. P. Wilkins; T. J. Ockenden; John Bonmar; John W. Gee; E. J. Crawford; F. H. Davis; W. E. Cline; T. A. Barr; G. W. Steward and H. M. Cobbey, and said jurors having been called and sworn on *voir dire* and passed for cause by the Court and by the respective counsel; and

E. J. Crawford having been peremptorily challenged by counsel [7] for the plaintiff and by the Court excused; and

T. A. Barr having been peremptorily challenged by counsel for the defendant and by the Court excused; and

John W. Gee having been peremptorily challenged by counsel for the plaintiff and by the Court excused; and

W. E. Cline having been peremptorily challenged by counsel for the defendant and by the Court excused; and

F. H. Davis having been peremptorily challenged by counsel for the plaintiff and by the Court excused; and

E. A. Walrond having been peremptorily challenged by counsel for the defendant and by the Court excused; and



G. W. Steward having been peremptorily challenged by counsel for the plaintiff and by the Court excused; and

John Bonnar having been peremptorily challenged by counsel for the plaintiff and by the Court excused; and

Thereupon the Court ordered the names of eight more petit jurors drawn from the jury-box, said names being as follows, to wit:

Joseph G. Martin; J. C. Wheeler; R. C. Clark; Eddie G. Theusen; G. C. Drake; Henry Reed; Oscar Puryear and C. L. Adams, and said petit jurors having been called and sworn on *voir dire* and passed for cause by the Court and by counsel for the respective parties hereto; and

Said R. C. Clarke having been peremptorily challenged by counsel for the defendant and by the Court excused; and

Thereupon the Court ordered the name of one more petit juror drawn from the jury-box, said name being W. D. Bowen; and said W. D. Bowen having been called, and sworn on *voir dire* and passed for cause by the Court and by counsel for the respective parties; and

Said W. D. Bowen having been peremptorily challenged by counsel for the defendant and by the Court excused; and

Thereupon the Court ordered the name of one more petit juror drawn from the jury-box, said name being John Shepherd, and said John Shepherd having been called and sworn on *voir dire* and

passed [8] for cause by the Court and by counsel for the respective parties; and

Said John Shepard having been peremptorily challenged by counsel for the defendant and by the Court excused;

Thereupon the Court ordered the name of one more petit juror drawn from the jury-box, said name as drawn being Chas. L. Fink, and said Chas. L. Fink having been called and sworn on *voir dire* and passed for cause by the Court and by counsel for the respective parties; and

Said Chas. L. Fink having been peremptorily challenged by counsel for the plaintiff and by the Court excused;

Thereupon the Court ordered the name of one more petit juror drawn from the jury-box, said name being J. J. Edward and said J. J. Edward having been called and sworn on *voir dire* and passed for cause by the Court and by counsel for the respective parties; and

Said J. J. Edwards having been peremptorily challenged by counsel for the defendant and by the Court excused;

It is by the court ordered that the name of one more petit juror be drawn from the jury-box, said name being T. J. Bone and said T. J. Bone having been called and sworn on *voir dire* and passed for cause by the Court and by counsel for the respective parties hereto, and counsel for the said respective parties not desiring to exercise their right to peremptorily challenge the jurors now in the box, it is by the Court ordered that said petit jurors be



sworn in a body as the jury to try this cause, said jurors being as follows, to wit:

THE JURY.

- |                      |                      |
|----------------------|----------------------|
| 1. J. D. Stephens,   | 7. Eddie G. Theusen, |
| 2. J. P. Wilkins,    | 8. Henry Reed,       |
| 3. T. J. Ockenden,   | 9. Oscar Puryear,    |
| 4. H. M. Coffey,     | 10. C. L. Adams,     |
| 5. Joseph G. Martin, | 11. G. C. Drake,     |
| 6. J. C. Wheeler,    | 12. Thos. J. Bone,   |

And Miss D. D. Simpson having been called and sworn, and said C. E. Lindsay having objected to the introduction of [9] of any evidence and said objection having been overruled and said witness having thereupon testified in behalf of the Government; and

Now, at the hour of 11:26 o'clock A. M., the Court admonishes the jury that during the progress of this trial they are not to speak to anyone about this cause or any matter or thing therewith connected, and that until said cause is finally submitted to them for their deliberation under the instruction of the Court they are not to speak to each other about this cause or any matter or thing therewith connected or form or express any opinion concerning the merits of the trial until it is finally submitted to them, and declares a recess for eight minutes; and

Now, at the hour of 11:34 o'clock A. M., the Court having reconvened and all being present as before and it being noted that the jury is present; and

Geo. B. Parker having been called, sworn and having testified in behalf of the Government; and

Now, at the hour of 11:58 o'clock A. M. the Court gives to the jury the aforementioned admonition and declares a recess to the hour of two o'clock P. M., and

Now, at the hour of two o'clock P. M. the Court having reconvened and all being present as before and it being noted that the jury is all present; and H. N. Ellis, Esq., Assistant U. S. Attorney, being also present as counsel for the Government; and

Geo. B. Parker having resumed the stand and testified further in behalf of the Government; and

In connection with his testimony it is by the Court ordered upon motion of counsel for the Government, that the following exhibit be admitted for Identification, to wit,

U. S. Ex. No. 1 for Identification—Telegram dated January 11, 1922, signed Spratt; and Sheldon Hunter having been called, sworn and having testified in behalf of the Government; and [10]

Miss D. D. Simpson having been recalled and having testified in behalf of the Government;

It is by the Court ordered, upon motion of counsel for the Government, that the following exhibit be admitted for Identification, to wit:

U. S. Ex. No. 2 for Identification—Bottle and contents bearing No. 6304; and

Byron White having been called, sworn and having testified in behalf of the Government,

It is by the Court ordered, upon motion of counsel for the Government, that the U. S. Ex. No. 1 heretofore offered and admitted for Identification

be admitted in evidence, said exhibit being as follows, to wit:

U. S. Ex. No. 1—Telegram to John English signed by Spratt and dated January 11th, 1922; and

Lulu Johnston having been called, sworn and having testified in behalf of the Government, it is by the Court ordered, upon motion of counsel for the Government, that the U. S. Ex. No. 2 heretofore offered and admitted for Identification be admitted in evidence, said exhibit being as follows, to wit:

U. S. Ex. No. 2—Bottle and contents;

And it is by the Court further ordered, upon motion of John R. Layng, Esq., attorney as aforesaid, that the following exhibit be admitted for Identification, to wit:

U. S. Ex. No. 3 for Identification — Bottle and contents labelled "Old Darling"; and

Geo. P. Parker having been recalled and having testified further in behalf of the Government; and

In connection with his testimony H. N. Ellis, Esq.; Assistant United States Attorney, reads to the jury paragraphs marked A and B of an affidavit of defendant Spratt, said paragraphs on motion of said H. N. Ellis, Esq., Assistant U. S. Attorney, being admitted [11] in evidence and marked United States Exhibit 4, said affidavit being dated January 18, 1922, Fresno, California; and

T. J. Nicely having been called, sworn and having testified in behalf of the Government,

It is by the Court ordered that the following exhibit be admitted in evidence for the Government on motion of H. N. Ellis, Esq., attorney as aforesaid:

U. S. Ex. No. 5—Certificate of Registration of Essex Car, in name John English; and

Thereupon the Court admonishes the jury that during the progress of this trial they are not to speak to anyone about this cause or any matter or thing therewith connected, and that until said cause is finally submitted to them for their deliberation under the instruction of the Court they are not to speak to each other about this cause or any matter or thing therewith connected, or form or express any opinion concerning the merits of the trial until it is finally submitted to them, and declares a recess for five minutes; and

Now, at the expiration of five minutes the Court having reconvened and all being present as before; and

T. J. Nicely, heretofore sworn, resumes the stand and testifies further in behalf of the Government; and

In connection with his testimony, it is by the Court ordered, upon motion of Asst. United States Attorney H. N. Ellis, Esq., that the following exhibits be admitted in evidence on behalf of the Government, to wit:

U. S. Ex. No. 6—Bottle and contents.

U. S. Ex. No. 7.—Three basket containers of bottles and contents.

Thereupon the Government rests except as to proof as to receipt of telegram; and

C. E. Lindsay having renewed his motion to strike,

It is by the Court ordered at the hour of 3:58 o'clock P. M. [12] that the jury herein be excused to the hour of ten o'clock A. M., June 9th, 1922, the jury having received the aforementioned admonition, and thereupon this Court declares a recess in this cause to said date. [13]

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At a stated term, to wit, the May Term, A. D. 1922, of the District Court of the United States, within and for the Northern Division of the Southern District of California, held at the courtroom thereof, in the city of Fresno, on Friday, the 9th day of June, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH, *alias* JOHN KELLY, GEORGE  
A. SPRATT and C. A. BURKE,

Defendants.

**Minutes of Court — June 9, 1922 — Trial  
(Continued).**

This cause coming on at this time for further trial of defendants herein; H. N. Ellis, Esq., Assistant U. S. Attorney, appearing as counsel for the Government; defendants John English, *alias* John Kelly, George A. Spratt and C. A. Burke being present in court with their Attorneys C. E. Lindsay, Esq.; R. K. Stewart, Esq., and W. C. Burgess, and counsel for the respective parties having announced their readiness to proceed with the trial of this cause, it is by the Court ordered that this cause be proceeded with; and

Thereupon said H. N. Ellis, Esq., having reviewed certain evidence at the request of the court and

Court having thereupon entered an order herein for the dismissal as to defendant C. A. Burke; and

Shelden Hunter, a witness heretofore sworn, resumes the stand; and

Thereupon the Government and defendants having rested; and

At the hour of 10:25 o'clock A. M. H. N. Ellis, Esq., having argued to the jury on behalf of the Government; and

At the hour of 10:30 o'clock A. M. W. C. Burgess having argued in behalf of defendant John English; and [14]

At the hour of 10:40 o'clock A. M. R. K. Stewart, Esq., having argued in behalf of defendant George A. Spratt; and



Said H. N. Ellis, Esq., having argued in rebuttal on behalf of the Government at the hour of 10:45 o'clock A. M.; and

At the hour of 10:55 o'clock A. M. the Court having instructed the jury with respect to the law involved in this cause and Geo. Hudson having been sworn as bailiff to care for the jury herein during the deliberation of its verdict; and

Now, at the hour of 11:45 o'clock A. M. the jury return into the courtroom and are asked by the clerk of the Court if they have agreed upon a verdict and the jury, through their foreman, having replied that they have so agreed, are required to present the same, said verdict as presented being as follows, to wit:

In the District Court of the United States, Southern  
District of California, Northern Division.

588—CRIM.

UNITED STATES OF AMERICA

vs.

JOHN ENGLISH, *alias* JOHN KELLEY and  
GEORGE A. SPRATT.

We, the jury in the above-entitled cause, find the defendant John English guilty as charged in the indictment and we the jury in the above-entitled cause find the defendant George A. Spratt guilty as charged in the indictment.

Fresno, California, June 9th, 1922.

J. C. WHEELER,

Foreman.

and the verdict of guilty as to defendant John English, *alias* John Kelley and George A. Spratt having been presented, read by the clerk, and ordered filed and entered herein; it is by the Court ordered that the jurors herein be excused subject to call; that U. S. Ex. No. 3 for Identification and U. S. Exhibits Nos. 2 and 6 be held by the Prohibition Officer and that U. S. Ex. No. 7 be destroyed by the U. S. Marshal; and

At the hour of two o'clock P. M. W. C. Burgess, Esq., having made a motion for a new trial on behalf of John English, said motion is overruled by the Court and an exception noted to the overruling on behalf of the defendant and said W. C. Burgess, having thereupon made a motion for arrest of judgment as to defendant John English, it is by the Court ordered that said motion be overruled and the court now pronounces sentence upon defendants John English and George A. Spratt for the offence of which they stand convicted, [15] namely, Viol. Section 37, Federal Penal Code. Conspiracy to violate Section 3, Title II of the National Prohibition Act, and it is the judgment of the Court that John English stand committed to the United States Penitentiary at McNeil Island for the term and period of twelve months and one day and that defendant George A. Spratt stand committed to the said United States Penitentiary at McNeil Island for the term and period of two years and pay unto the United States of America a fine in the sum of \$1000.00 and stand committed to the said penitentiary until said fine is paid or defendant is dis-



charged according to law, sentence for failure to pay the \$1000.00 fine not to commence to run until the expiration of two years sentence, and it is further ordered by the Court that the two years term of imprisonment in this cause begin to run immediately and be concurrent with the sentence imposed against said defendant George A. Spratt in cause No. 593—Crim.

5/317-318. [16]

In the District Court of the United States, Southern District of California, Northern Division.

588—CRIM.

UNITED STATES OF AMERICA

vs.

JOHN ENGLISH, *alias* JOHN KELLY and  
GEORGE A. SPRATT.

We, the jury in the above-entitled cause, find the defendant John English — guilty as charged in the indictment, and we, the jury in the above-entitled cause, find the defendant George A. Spratt — guilty as charged in the indictment.

J. C. WHEELER,

Foreman.

Fresno, California, June 9, 1922.

Filed Jun. 9, 1922. Chas. N. Williams, Clerk.  
Louis J. Somers, Deputy. [17]

In the District Court of the United States in and  
for the Southern District of California, North-  
ern Division.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH, *alias* JOHN KELLY, GEORGE  
A. SPRATT and C. A. BURKE,

Defendants.

**Clerk's Certificate to Judgment-roll.**

I, Chas. N. Williams, clerk of the District Court  
of the United States, for the Southern District of  
California, do hereby certify the foregoing to be  
a full, true and correct copy of an original Judg-  
ment entered in the above-entitled cause; and I do  
further certify that the papers hereto annexed con-  
stitute the judgment-roll in said cause.

Attest my hand and seal of said District Court  
this 14th day of June, A. D. 1922.

[Seal]

CHAS. N. WILLIAMS,

Clerk.

By Louis J. Somers,

Deputy Clerk.

[Indorsed]: No. 588—Crim. In the District  
Court of the United States for the Southern District  
of California, Northern Division. United States of  
America, Plaintiff, vs. John English *alias* John  
Kelly, George A. Spratt and C. A. *Burk*, Defend-  
ants. Judgment-roll. As to all defts. Filed June

14, 1922. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy Clerk. Recorded Min. Book No. 5, Pages 317-318. [18]

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In the District Court of the United States in and  
for the Southern District of California,  
Northern Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH, *alias* JOHN KELLY, GEORGE  
A. SPRATT and C. A. BURKE,

Defendants.

**Petition for Writ of Error.**

Comes now John English, one of the defendants herein, and by this, his petition for a writ of error herein, says that on the 9th day of June, 1922, the above-entitled court rendered and entered judgment herein in favor of the said plaintiff and against said defendant John English, wherein the said Court adjudged the said defendant guilty of the crime charged in the indictment herein and that he, the said defendant, be imprisoned in the penitentiary for the period of one year and one day.

Your petitioner further shows that in said judgment and the proceedings had prior thereto in this cause, certain errors were committed to the prejudice and great damage of this defendant, all of which will more fully appear from the assignment of errors filed with this petition.

WHEREFORE, said defendant, John English, prays that a writ of error may issue in this behalf out of the United States Circuit Court of Appeals for the Ninth Circuit, for the correction of the errors so complained of, and for the reversal of said judgment, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, may be sent to said United States Circuit Court of Appeals for the Ninth Circuit, at the city of San Francisco in said Circuit, and that an order be [19] made fixing the amount of the bail bond herein which shall operate as a supersedeas bond herein and entitle said defendant to be at large pending the determination of said writ of error.

W. C. BURGESS,

Attorney for Defendant, John English.

The writ of error prayed for in the foregoing petition is allowed as by order made this 8th day of July, 1922.

TRIPPET,

Judge of the District Court of the United States  
for the Southern District of California.

[Indorsed]: 588. U. S. District Court, Southern District of California, Northern Division. United States of America, Plaintiff, vs. John English, *alias* John Kelly et als., Defendants. Petition for Writ of Error. Filed Jul. 8, 1922. Chas. N. Williams, Clerk. By Murray E. Wire, Deputy Clerk. Law Offices of W. C. Burgess, Crocker Building, San Francisco, California, Attorneys for Defendant. [20]

In the District Court of the United States for the  
Southern District of California, Northern  
Division.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH, *alias* JOHN KELLY, GEORGE  
A. SPRATT, and C. A. BURKE,

Defendants.

**Order Fixing Amount of Bond on Writ of Error.**

Now, on this 8th day of July, 1922, the above-entitled cause coming on regularly to be heard on the petition of the above-named defendant John English praying that a writ of error may issue herein to review the judgment entered herein, and for the correction of errors in the proceedings had prior thereunto in this cause, and praying that an order be made fixing the amount of the bail bond herein which defendant John English shall give and furnish upon said writ of error, which shall operate as a supersedeas bond herein and shall entitle said defendant John English to be at large pending the determination of said writ of error, and said defendant having filed herein and presented to the Court his said petition, and therewith an assignment of errors relied upon and intended to be urged by him on said writ of error; and it appearing to the Court that said defendant is entitled to said writ of error and to said order, now, on motion of W. C. Burgess, attorney for said defendant,—

IT IS ORDERED that upon defendant John English entering into and giving a bail bond for the amount and conditioned as hereinafter mentioned, a writ of error as prayed for herein is allowed and granted, and that a transcript of the record, proceedings and papers in this cause, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit at the city [21] of San Francisco, California, in said Circuit; and,

IT IS FURTHER ORDERED, that upon the said defendant John English filing with the Clerk of this Court a good and sufficient bail bond, to be approved by this Court, in the sum of Five Thousand Dollars (\$5,000.00), conditioned as required by law, that all further proceedings in this court be and they are hereby suspended and stayed, and said defendant John English shall thereupon be entitled to be at large on said bail pending the termination of said writ of error.

TRIPPET,  
Judge.

Dated July 8th, 1922.

[Indorsed]: 588. U. S. District Court, Southern District of California, Northern Division. U. S. of America, Plaintiff, vs. John English, etc., et als., Defendants. Order Fixing Supersedeas Bond. Filed Jul. 8, 1922, at——min. past——o'clock—M. Chas. N. Williams, Clerk. By Murray E. Wire, Deputy Clerk. Law Offices of W. C. Burgess, Crocker Building, San Francisco, California, Attorneys for———. [22]



In the District Court of the United States for the  
Southern District of California, Northern Di-  
vision.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH, *alias* JOHN KELLY,  
GEORGE A. SPRATT, C. A. BURKE,  
Defendants.

**Assignment of Errors.**

Comes now John English, one of the defendants in the above-entitled cause and makes and files with his petition for writ of error herein the following assignment of errors, which, he avers, occurred upon the trial of the above-entitled cause and in the proceedings had and taken therein, and which he will assert and rely upon in the presentation of his said writ of error in the United States Circuit Court of Appeals for the Ninth Circuit, to wit,—

I.

The said Court erred in overruling the defendants' motion that no evidence be received in said cause on the ground that the indictment does not state a public offence, nor does it state any offense in contravention of any of the laws of the United States, and it does not state a crime as defined by any statute of the United States, to which said ruling the defendant duly excepted.

## II.

The Court erred in overruling defendants' objection to the introduction of evidence of a conversation between witness D. D. Simpson and George A. Spratt, one of the above-named defendants, and erred in admitting said conversation in evidence, said objection being on the ground that said conversation was [23] immaterial, irrelevant and incompetent, the proper foundation has not been laid, there has been no evidence offered to prove or tending to prove the charge alleged in the indictment, to wit, the charge of conspiracy, that as to the defendants Burke and English it is hearsay, and that it did not take place during the course of any conspiracy alleged in the indictment.

That the witness testified over the objection of defendant as follows:

That the conversation took place about the 9th or 10th of January, that she and Agent Parker told Spratt that they wanted to buy some bonded whiskey, that Spratt told them he could sell it in ten case lots for \$125.00 a case; also, alcohol at \$10.00 a gallon; that he knew a man in San Francisco with 300 cases of bonded whiskey; that witness and Parker ordered 10 cases of whiskey and 10 gallons of alcohol from Spratt; to be delivered January 13, 1922. That Spratt did not mention the name of the party in San Francisco, and the conversation was on January 9th.

That the defendant duly excepted to the ruling of the Court.



## III.

That the Court erred in overruling the defendants' objection to the admission as evidence of a conversation had between witness D. D. Simpson and George A. Spratt, had on January 13th, and in admitting said conversation as evidence, said objection being on the same grounds as set forth in paragraph II hereof, to which ruling defendant duly excepted. Said testimony so admitted over the objection of defendant is as follows:

He (meaning George A. Spratt) told me that a load of liquor was on the highway. He asked Mr. Parker if he had the money to pay for it. We were to pay for it when delivered. I told him Mr. Parker had the money. He said, "Well, can I depend on you to be here at 7:30 o'clock." I said we would both be there. Spratt said he would go out on the highway and tell the man to come in.

[24]

## IV.

The Court erred in admitting over the objection of defendant evidence of the witness D. D. Simpson of a conversation had with the defendant George A. Spratt on January 13, 1922, to which ruling defendant duly excepted, and which conversation was as follows,

He (meaning Spratt) told me that the man was waiting out on the highway with this load of liquor and he wanted to know if Mr. Parker had the money to pay for it and if he could depend on Mr. Parker and myself being present at 631 "O" Street, that it would be delivered at 7:30 P. M.

Burke came in a few minutes later and I spoke to him about a taxi bill I owed and got some money from Mr. Parker to pay him.

Said objection was on the same grounds as set forth in paragraph II hereof.

V.

The Court erred in overruling defendants' objections to the following question and in admitting as evidence the answer of the witness D. D. Simpson, said objection being on the same grounds as set forth in paragraph II hereof.

Q. Anything else?

A. I saw the defendant English there that night about ten minutes after Burke came in. The agents brought him in.

Defendant duly excepted to said ruling.

VI.

The Court erred in overruling defendants' objection to the following testimony and in admitting the same as evidence in said cause, to which ruling the defendant duly excepted:

Q. Did you see any liquor on the premises that night when defendants Spratt, Burke and English were there?

Mr. LINDSAY.—I object to that as immaterial and irrelevant, not tending to prove any of the charges in the indictment, not tending to prove the conspiracy charge, and not tending to prove any of the overt acts charged in the indictment. [25]

The COURT.—Objection overruled.

Mr. LINDSAY.—Exception.

The witness then testified over the objection of defendant;

Yes, I did. It was in a dish-pan, in the room occupied by Mr. Spratt. They were one-fifth gallon bottles labeled "Old Taylor." I saw the defendant English on the night of January 13th. I never saw him any other time before that.

VII.

The Court erred in admitting as evidence over the objection of defendant, to which ruling defendant duly excepted, the evidence of George V. Parker as to a conversation between himself and defendant George A. Spratt, had on January 5th or 6th. The witness had testified that he first saw the defendant English on January 13th, and that he had had a conversation with Spratt the first night they met, January 5th or 6th.

Q. What was the conversation that you had with Mr. Spratt there?

Mr. LINDSAY.—I object to that as immaterial, irrelevant and incompetent, not within the issues, the proper foundation has not been laid, and there has been no evidence offered here proving or tending to prove conspiracy as alleged in the indictment, and this objection is made on behalf of all of the defendants, and on behalf of the defendants Burke and English I also object on the ground that as to them and each of them, particularly, as hearsay.

The COURT.—I will reserve my ruling.

The WITNESS.—Spratt said he could supply liquor in any amount, any kind of liquor.

### VIII.

The Court erred in admitting over the objection of defendant, evidence of the witness Parker as to another conversation as follows: [26]

Q. Did you have a conversation with Spratt the next day at 4 o'clock? A. We did.

Q. I will ask you to state the conversation you had.

Mr. LINDSAY.—Same objection as before, if your Honor please.

The COURT.—Ruling reserved as to English and Burke. Overruled as to Spratt.

Mr. LINDSAY.—Exception.

The witness then testified that Agent Simpson had asked Spratt if he could supply liquor and that Spratt answered yes, and asked how much they wanted and that they told him ten cases, and that Spratt said it was bonded liquor. That they also ordered ten gallons of alcohol. That the conversation was on the 9th. That the conversations were both prior and subsequent to the 13th of January; that English was first mentioned subsequent to the 13th of January when Spratt made a statement as to his dealings with Burke and English on matters that transpired in December, 1921. This was after the raid had been made.

### IX.

The witness was then asked to give the conversation made in *in* the presence of the Federal officials and referred to as a statement. Defendants ob-

jected thereto and the Court sustained the objection as to English and Burke and overruled it as to Spratt. The following proceedings were then had.

Mr. LINDSAY.—If your Honor please, may I make one more objection that has occurred to me? I understand that the testimony has been declared by your Honor to be irrelevant as to the defendants Burke and English, and my objection has been sustained as to those defendants.

The COURT.—Yes.

Mr. LINDSAY.—That is the ruling. Then I state that it is irrelevant for all purposes; unless it relates to more than one of the defendants it must be irrelevant. Unless more than one [27] of the alleged conspirators is to be bound by the testimony it must be irrelevant to the single conspirator.

The COURT.—Objection overruled.

Mr. LINDSAY.—Exception.

The witness then testified over said objection that Spratt said he had secured the liquor he sold during the month of December from John English, that Burke had introduced them, that Burke had advanced Spratt the money to purchase the liquor, that it had been delivered at Spratt's house and was the liquor sold to the Federal agents during the month of December. That Spratt was asked where he had secured this load of liquor and he said he sent a telegram of John English in San Francisco reading, "Can use ten shares of stock Friday night," and that English brought the liquor down there. That Spratt continued and told how



he had first met English and secured liquor from him; that English told him that he could supply the liquor at \$115.00 a case.

During the testimony it was admitted by the United States Attorney and so held by the Court that this conversation would not bind the defendants Burke and English, but only bind Spratt.

#### X.

The witness was then called on to identify a telegram as being in the handwriting of Spratt and testified that he had seen Spratt sign his name about 20 times.

The testimony was objected to as immaterial and irrelevant and on the ground that the witness had not qualified to answer the question.

The objection was overruled and the witness testified that the signature was George Spratt's.

#### XI.

Sheldon Hunter was then sworn and testified that he was the [28] Fresno manager of the Western Union. He was shown the telegram. He testified that he had never seen it until he got it out of the office files of the Western Union. He was asked if the telegram had been sent.

Mr. LINDSAY.—I object to that as immaterial, irrelevant and incompetent, hearsay, and on the further ground that there has been no evidence here of any conspiracy, therefore evidence as to any overt act alleged in the indictment is irrelevant.

The Court overruled the objection and the defendants except.



The witness then testified over said objection that the telegram had transmission marks on it that the operator had sent it.

XII.

The Government then offered a bottle of liquid, identified by the witness Simpson as one she purchased on the 20th day of December at 631 "O" Street, at Spratt's house.

It was objected to by defendants as immaterial, irrelevant and incompetent, not one of the overt acts alleged in the indictment, and not any act in pursuance of the alleged conspiracy.

The objection was overruled and the defendants excepted.

XIII.

The Court erred in admitting as evidence the testimony of the Witness Simpson (recalled) as a conversation relating to the purchase of liquor from defendant Spratt and one Lulu Johnston on the 20th day of December, 1921. The proceedings were as follows:

Q. What was said about the purchase of this liquor by you to either of these defendants, or what was said by any of the defendants concerning it, at the time?

The defendants objected to the same as immaterial, irrelevant and incompetent, hearsay, and not within the issues, and no foundation laid.

The COURT.—Objection overruled except as to the defendant [29] English; as to him I will take it under advisement.

Mr. LINDSAY.—Exception.

The witness then testified over said objection,—We said to Lulu Johnston and George Spratt in the presence of Burke that we wanted to buy a bottle of whiskey and Lulu Johnston and George Spratt said it was genuine whiskey and they invited us to have a drink out of another bottle labelled the same. This was about 9 o'clock P. M. I bought the whiskey from Johnston and Spratt and the money was given to Johnston by Agent Emerick.

Mr. LINDSAY.—I do not understand, if your Honor please, that this Johnston person is accused of being one of these conspirators. We are certainly not bound by anything that was done by this lady in either procuring whiskey with the Johnston person or buying whiskey.

Mr. ELLIS.—She said, your Honor, and I think without question, that she bought it from Spratt and this Johnston woman. They were there at the house together.

The COURT.—Wait a minute. This indictment charges a conspiracy between these three defendants and various other persons to the Grand Jurors unknown. Johnston may have been one of those in the conspiracy. I will overrule the objection.

Mr. LINDSAY.—Exception.

Mr. ELLIS.—I only wanted it for counsel. She said she bought it from Spratt. That is all I wanted to develop. That will be satisfactory.

Mr. LINDSAY.—None of it is satisfactory. We have objected to all of it as far as that is concerned.

XIV.

The Court erred in admitting the testimony of Byron White concerning a telegram as follows:

Witness testified that he was with the Western Union Telegraph Company in Fresno. He was shown the telegram marked United [30] States Exhibit No. 1 for identification, and continued,

I believe I accepted it across the counter; I do not know the defendant Spratt, I do not know him as the person from whom I received the telegram.

The telegram was then offered in evidence.

Mr. LINDSAY.—I object to it as irrelevant, immaterial and incompetent, has not been identified nor in any manner connected with any defendant in this case, not a part of the case, not within the issues.

The COURT.—A witness testified that was the defendant Spratt's signature, as I remember it.

Mr. ELLIS.—It is.

Mr. LINDSAY.—That is the extent of it. No proof that it was ever sent or received.

The COURT.—That is for argument to the jury. I will overrule the objection.

To which ruling the defendants duly excepted. The telegram was then, over said objection, admitted in evidence.

XV.

The Court erred in admitting the testimony of the witness Johnston as to a conversation between agents Simpson and Parker and the defendant Spratt during the week preceding the raid on January 13th, concerning liquor, defendants ob-

jected to said testimony on the ground that it was immaterial, irrelevant and incompetent, not within the issues, and hearsay as to the defendants English and Burke.

The COURT.—As to Burke and English, it will be taken under advisement, overruled as to Spratt.

Mr. LINDSAY.—Exception.

Over said objection witness testified that they were still trying to get liquor, but did not remember whether they said anything about how it was to be procured. Spratt said he [31] thought he could get it. She saw English there the night of the 13th when he was brought in by the officers. Did not hear any conversation about a telegram. Simpson told me to ask Spratt if he had ordered the liquor. He said that he had.

#### XVI.

The Court erred in admitting over defendant's objection a bottle of liquor marked United States Exhibit No. 2 for identification.

• The evidence was objected to by defendant as immaterial, irrelevant and incompetent, has not been identified, and not within the issues of this case.

The objection was overruled and the defendant duly excepted.

The bottle of liquid was then admitted over said objection and marked United States Exhibit No. 2.

#### XVII.

The case was duly submitted to the jury and the jury found the defendants English and Spratt guilty as charged in the indictment.

The defendant John English thereupon made his motion for a new trial on the grounds that the verdict is not supported by the evidence, that the verdict is against the evidence, errors of law committed at the trial and the admission of evidence over the objection of the defendant English.

The Court denied the motion and the defendant duly excepted.

### XVIII.

The defendant John English then made his motion in arrest of judgment on the ground that the indictment does not state an *an* offense against the laws of the United States; there is no evidence of any overt act introduced in support of the allegations of conspiracy, and errors of law committed at the trial.

The Court denied the motion and the defendant duly excepted. [32]

WHEREFORE, the defendant John English prays that the judgment heretofore rendered and entered in this cause may be reversed and held for naught, and that the indictment herein and each of the counts thereof be dismissed, and that the defendant John English have such other and further relief as may be in conformity with the law and practice of this Court.

W. C. BURGESS,

Attorney for Defendant, John English.

[Indorsed]: #588. United States District Court, Southern District of California, Northern Division. United States of America, Plaintiff, vs. John Eng-



lish, etc., et als. Assignment of Errors. Filed Jul. 8, 1922. Chas. N. Williams, Clerk. By Murray E. Wire, Deputy Clerk. Law Offices of W. C. Burgess, Crocker Building, San Francisco, California, Attorneys for ————. [33]

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In the District Court of the United States, for the  
Southern District of California, Northern  
Division.

No. 588—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH, *alias* JOHN KELLY, GEORGE  
A. SPRATT, C. A. BURKE,

Defendants.

**Engrossed Bill of Exceptions of Defendant John  
English.**

BE IT REMEMBERED that this cause was brought on for trial at the May term of said court, at the courtroom, in the Postoffice Building, in the city of Fresno, in said district, on the 8th day of June, 1922, before the Court, Hon. Oscar A. Trippet, District Judge, presiding, and a jury, Herbert H. Ellis, Esq., and John R. Layng, Esq., Assistant United States Attorneys, appearing for the plaintiff, and W. C. Burgess, Esq., appearing for the defendant John English.

And the case being called for trial, the plaintiff, to maintain the issue on its part, called as a witness,



D. D. Simpson, who was duly sworn, and testified that her name was D. D. Simpson.

EXCEPTION No. 1.

Whereupon the defendants, by their counsel, moved that no evidence be received in the cause on the ground that the indictment [34] does not state a public offense, nor does it state any offense in contravention of any of the laws of the United States, and that it does not state a crime as defined by any statute of the United States.

The Court overruled the objection and an exception was taken on behalf of all of the defendants.

**Testimony of D. D. Simpson, for the Government.**

The witness then proceeded to testify that she was a Federal Prohibition Agent, and knew defendants Spratt, Burke and English; that on or about the 9th or 10th of January, this year, at 631 "O" Street, Fresno, she had a conversation with Spratt relative to the purchase of whiskey; that this occurred in the presence of Lulu Johnston and Special Agent Parker.

EXCEPTION No. 2.

Q. I will ask you to state what was said.

Mr. LINDSAY.—I object to that, if your Honor please, as immaterial, irrelevant and incompetent, the proper foundation has not been laid; there has been no evidence offered to prove or tending to prove the charge alleged in the indictment, to wit, the charge of conspiracy, and I also object on behalf of the defendants Burke and English, on the ground that as to them that is hearsay.

(Testimony of D. D. Simpson.)

The COURT.—Well, of course, what Spratt said will not be binding on English and Burke unless the conspiracy existed at that time. The practice is, generally, to show some evidence of conspiracy.

Mr. LAYNG.—Of course, we cannot prove that all at once, if your Honor please.

The COURT.—Any statements made—

Mr. LAYNG.—It would not be binding upon the other parties unless we connect it up. Of course, we cannot connect it up all at once. [35]

Discussion.

Mr. LINDSAY.—An additional objection occurs to me that it does not appear that this conversation took place during the course of any conspiracy alleged in the indictment.

The COURT.—The conversation, of course, must be had after the conspiracy was formed, and the conversation must have occurred in furtherance of the conspiracy.

Discussion.

The COURT.—All right. I will overrule the objection. Answer the question.

Mr. LINDSAY.—Note an exception.

The COURT.—I will reserve my ruling as to English and Burke. Overruled as to Spratt.

The witness then proceeded to testify that she and Special Agent Parker told Spratt that they wanted to buy some bonded whiskey; that Spratt said he could sell it in ten case lots at \$125.00 a case; also, alcohol at \$10.00 a gallon; that he knew a man in San Francisco with 300 cases of bonded whiskey;

(Testimony of D. D. Simpson.)

that witness and Parker ordered 10 cases of whiskey and 10 gallons of alcohol from Spratt, to be delivered January 13, 1922. That Mr. Spratt did not mention the name of the party in San Francisco. That the conversation was on January 9th. That she saw the three defendants, Spratt, Burke and English on January 13th, 1922, at 631 "O" Street, Fresno, California. She saw Spratt before 7 o'clock; that she and Spratt left the house together.

EXCEPTION No. 3.

Mr. LAYNG.—What did Mr. Spratt tell you at that time?

Mr. LINDSAY.—Same objection as to the former question.

The COURT.—What was this date?

Mr. LAYNG.—This was on the 13th. [36]

The COURT.—January 13th. The ruling will be reserved as to English and Burke. Overruled as to Spratt.

Mr. LINDSAY.—Exception.

The witness then testified over the objection of defendants as follows:

He told me that the load of liquor was on the highway. He asked me if Mr. Parker had the money to pay for it. We were to pay for it when delivered. I told him Mr. Parker did have it. "Well," he said "can I depend on you to be here at 7:30 o'clock?" I said, "Yes, we would both be there." Mr. Spratt said he would go out on the highway and inform the man to come in. Mr.

(Testimony of D. D. Simpson.)

Spratt drove me down to the Hotel Ray. We had a conversation on the way.

EXCEPTION No. 4.

Mr. LAYNG.—I will ask you to detail the conversation.

Mr. LINDSAY.—I don't like to take up the time of the Court in making objections but I object on the same grounds.

The COURT.—What date was this?

The WITNESS.—That was on January 13th.

The COURT.—The same day. The same course of procedure.

Mr. LINDSAY.—Exception.

The witness then testified over the objection of defendant as follows:

He told me that the man was waiting out on the highway with this load of liquor and he wanted to know if Mr. Parker had the money to pay for it and if he could depend on Mr. Parker and myself being at 631 "O" Street, that they would deliver it at 7:30. I returned to the house about 7:30. Mr. Burke came in a few minutes later. I spoke to him about a taxi bill and got some money from Mr. Parker to pay him for the trip from which I had just returned. [37]

Mr. Spratt came to the door to my room and said the liquor was there.

EXCEPTION No. 5.

Q. Anything else?

Mr. LINDSAY.—I object to anything Mr. Spratt might have said at that time as being immaterial

(Testimony of D. D. Simpson.)

and irrelevant, and on the other grounds I have heretofore advanced.

The COURT.—Was this still on the 13th?

The WITNESS.—Yes, sir.

The ruling will be reserved as to English and Burke. Overruled as to Spratt.

The witness continued: I saw the defendant English, he gave his name as John Kelly, there that night, about ten minutes after Burke came in. The agents brought him in.

#### EXCEPTION No. 6.

Q. Did you see any liquor on the premises that night when the defendants Spratt, Burke and English were there?

Mr. LINDSAY.—I object to that as immaterial and irrelevant, not tending to prove any of the charges in the indictment, not tending to prove the conspiracy charge, and not tending to prove any of the overt acts charged in the indictment.

The COURT.—Objection overruled.

Mr. LINDSAY.—Exception.

The witness then testified over the objection of defendant:

Yes, I did. It was in a dish-pan, in the room occupied by Mr. Spratt. They were one-fifth gallon bottles labeled "Old Taylor." I first met the defendant Burke about December 19, 1921, but did not see him again until after January 3d, 1922. I saw him between the 3d and the 13th possibly six times at 631 O Street. [38] I did not have any conversations with him relative to liquor.



(Testimony of D. D. Simpson.)

Mr. LAYNG.—Did you see the defendant English at 631 O Street at any other time than the 13th of January?

A. No, just on the night of the 13th.

Q. Did you ever see Mr. English before that time?

A. No, I don't believe so.

EXCEPTION No. 7.

**Testimony of George V. Parker, for the Government.**

The Government then called GEORGE V. PARKER as a witness in its behalf. He was duly sworn and testified as follows:

My name is George V. Parker. I am Special Agent, Bureau of Internal Revenue. I arrived in Fresno either January 5th or 6th. I know the defendants Spratt, Burke and English; I first met Spratt January 8th at 631 O Street; I first met defendant Burke on the night of my arrival; I first saw the defendant English at 631 O Street on January 13th; I had a conversation with Spratt relative to liquor the first night I met him.

Mr. LAYNG.—What was the conversation that you had with Spratt there?

Mr. LINDSAY.—I object to that as immaterial, irrelevant, incompetent, not within the issues, the proper foundation has not been laid, and there has been no evidence offered here proving or tending to prove conspiracy as alleged in the indictment, and this objection is made on behalf of all of the defendants, and on behalf of the defendants Burke



(Testimony of George V. Parker.)

and English I also object on the grounds that as to them and each of them, particularly, as hearsay.

The COURT.—I will reserve my ruling. What is the date now?

The WITNESS.—This was January 8th.

Mr. LAYNG.—Now state the conversation.

The WITNESS.—Spratt said, in the presence of Lulu Johnstone and D. D. Simpson, that he could supply liquor in any amount, [39] any kind of liquor.

EXCEPTION No. 8.

Q. Did you have a conversation with Spratt the next day at 4:00 o'clock? A. We did.

Q. I will ask you to state the conversation you had.

Mr. LINDSAY.—Same objection as before, if your Honor please.

The COURT.—Ruling reserved as to English and Burke. Overruled as to Spratt.

Mr. LINDSAY.—Exception.

The witness then testified over the objection of defendants that Agent Simpson asked Spratt if he could supply liquor and Spratt answered "yes," and asked us what kind of liquor we wanted and how much; told him about ten cases and asked him if it was bonded liquor. He said "Yes" and said he could supply alcohol. This was on the 9th. The substance of the conversation was that he would sell us ten cases of whiskey and ten gallons of alcohol. Prior to and subsequent to January 13th I had a conversation with Spratt relative to what hap-

(Testimony of George V. Parker.)

pened in December; English and Burke were first mentioned in this regard subsequent to January 13th, a few days after, he made a statement at 631 O Street, one in the United States Attorney's office and one in the County Jail. He made a statement on January 13th relative to his dealings with Burke and English, on matters that transpired in December, 1921, in the presence of Agent Simpson, Federal Director Mitchell, Special Agent Oftadel and myself. This was after the raid and Mr. Spratt was in custody, but no papers had been served.

#### EXCEPTION No. 9.

The prosecuting attorney having asked the witness to give [40] the conversation defendants objected as follows:

Mr. LINDSAY.—Now, I object on behalf of the defendants Burke and English on the ground that it is irrelevant and immaterial, not within the issues, hearsay, and—

The COURT.—That is sufficient, it seems to me. The conspiracy must have ended then, Mr. Layng. Spratt could not say anything that would bind the other defendants.

Mr. LAYNG.—No, it would bind himself.

The COURT.—It will be sustained as to Burke and English, overruled as to Spratt.

The WITNESS.—Do you want the conversation relative to these two men only?

Mr. LAYNG.—Yes.

The COURT.—State the whole conversation that occurred there.

(Testimony of George V. Parker.)

The WITNESS.—It was no conversation, Spratt was given an opportunity to make a statement. He stated his connection with 631 O Street and concerning the sale of liquor.

EXCEPTION No. 10.

Mr. LINDSAY.—If your Honor please, may I make one more objection that has occurred to me? I understand that the testimony has been declared by your Honor to be irrelevant as to the defendants Burke and English, and my objection has been sustained as to those defendants.

The COURT.—Yes.

Mr. LINDSAY.—That is the ruling. Then I state that it is irrelevant for all purposes; unless it relates to more than one of the defendants it must be irrelevant. Unless more than one of the alleged conspirators is to be bound by the testimony it must be irrelevant to the single conspirator. [41]

The COURT.—Objection overruled.

Mr. LINDSAY.—Exception.

The witness then proceeded to testify over the objection of defendants as follows:

The WITNESS.—I believe Mr. Oftadal, Special Agent in charge, asked Spratt where he had secured the liquor that he had sold during that week and during the month of December. He said the liquor he sold was a case of liquor he secured from—I don't know whether he mentioned the name of Kelly or English—it was John Kelly. He said he was introduced to Kelly by Burke and Burke stated that Kelly had—Spratt said that Burke

(Testimony of George V. Parker.)

had told him that English had a case of whiskey and wanted to sell it; that Spratt did not have the money and Burke paid for the whiskey, and Spratt either brought the liquor to his house or had it delivered; I don't remember, and that was the liquor that Spratt and Lulu Johnston sold to Federal Agents during month of December, one quart or one bottle of that liquor. When he was asked where this load of liquor had been secured Spratt said that he sent a telegram to John English on Market Street in San Francisco, reading, "Can use ten shares of stock Friday night." Friday was the 13th. English brought the liquor down there, first stopping at the house of Burke, where he unloaded a case.

Mr. LINDSAY.—In regard to that, do I understand that, do I understand that the witness now is relating what Spratt said?

The WITNESS.—Yes, sir. He unloaded a case of liquor at Burke's house that night, then Burke preceded him to 631 O Street.

The witness continued to testify concerning the same conversation or statement of Spratt after his arrest.

Spratt told how he first met English and secured liquor from him. [42]

The witness being asked for any conversation that occurred defendants objected on the same grounds as before, and the following proceedings were had.

The COURT.—When was this conversation?

(Testimony of George V. Parker.)

The WITNESS.—January 13th.

Mr. ELLIS.—At the time of the arrest.

Mr. LINDSAY.—After the arrest.

The COURT.—That wouldn't bind anybody but Spratt.

Mr. ELLIS.—Oh, no, certainly.

The COURT.—The conspiracy was over at that time, undoubtedly.

Mr. ELLIS.—Yes, that is true.

The COURT.—Then he can't make any statement to bind the other defendants.

Mr. ELLIS.—We are not seeking to bind the other defendants.

The COURT.—You did not so state. Proceed.

The witness then proceeded to testify to his conversation with Spratt:

Spratt stated that he first met English in December, 1921, at the Pioneer Bar in Fresno; that he bought a case of whiskey from English with Burke's money, and Burke was to have part of the whiskey, but whenever Burke took any of the whiskey Spratt was to be given credit for that amount of money; that English told him that he could supply him with liquor at \$115.00 a case. Spratt never told me much about his liquor handling prior to the raid, but he told me he could get liquor from a man in San Francisco, that he would send for it and have it here Friday night.

The witness continued: I was there Friday night. I saw only one bottle of liquor there Friday night. It was in the pocket of Mr. English. [43]



(Testimony of George V. Parker.)

Burke arrived about five minutes before. Agent Simpson said "Spratt says the liquor is here," and right then the raid took place. I saw a dish pan with some bottles of liquor brought in. Burke and I were in the dining-room. Spratt and Simpson went to the rear of the house. Agents Hunt and DeSpain entered with a search-warrant. In a few minutes Spratt and English were brought in. A bottle was found in English's pocket. I marked this bottle myself. There were eight or ten bottles in the dish-pan. The bottle taken from English was the same size as those in the dish-pan, one-fifth gallon, but I do not remember whether it was labelled the same or not. I do not remember the name on the bottle. All of the bottles were stamped.

#### EXCEPTION No. 11.

The witness continued: I am familiar with the signature of Mr. Spratt and with his handwriting. Since the 13th of January Spratt has signed his name in my presence, I should imagine, twenty times, and looking over the records of the revenue office I have seen his signature innumerable times, as well as his handwriting. His signature is peculiar.

Q. I show you a telegram here written in pencil and ask you if you know in whose handwriting it is. A. The signature, yes.

Q. Whose signature is that?

A. George Spratt's.

Mr. LINDSAY.—I *object that* as immaterial and



(Testimony of Sheldon Hunter.)

irrelevant. The witness has not shown that he is qualified to answer the question that I know of.

The COURT.—Objection overruled. [44]

EXCEPTION No. 12.

**Testimony of Sheldon Hunter, for the Government.**

SHELDON HUNTER was then sworn on behalf of the Government and testified that he was the manager of the Western Union, Fresno, California, and was the custodian of the office records there. His attention was called to the telegram mentioned by Parker and the following proceedings were had.

Q. (By Mr. ELLIS.) Where did you ever see that before.

A. Not until I got it out of the files.

Q. What?

A. Not until I got it out of the files. Not until I had it removed from the files.

Q. From what files?

A. Our message files.

Q. Whose message files?

A. The Western Union Telegraph Company.

Q. Calling your attention to it, are you able, by examination of that document or from any other record in your office and your knowledge of the business of the office, able to state whether that is a telegram that was sent by the Western Union Company? A. Yes.

Q. Was it sent?

(Testimony of D. D. Simpson.)

Mr. LINDSAY.—I object to that as immaterial, irrelevant, incompetent, hearsay, and on the further ground that there has been no evidence here of any conspiracy; therefore, evidence as to any overt act alleged in the indictment is irrelevant.

The COURT.—Objection overruled.

Mr. LINDSAY.—Exception.

The WITNESS.—It has transmission marks on it that the operator has transmitted it. [45]

The witness then testified that the private mark of the operator indicated that night operator Rudin was the operator on duty. That the second sheet attached to the telegram was a service message indicating that the message was not delivered at the first attempt. It was originally addressed 745 Market Street.

#### EXCEPTION No. 13.

#### **Testimony of D. D. Simpson, for the Government (Recalled).**

Witness SIMPSON was then recalled by the Government and the following proceedings were had:

Q. I show you a bottle here and ask you if you have seen that before?

A. Yes. On the 20th day of December, 1921, at 631 O Street, Fresno, where Mr. Spratt lives. I kept it with me until the 21st day of December, then I took it to San Francisco, to the State Prohibition Director Mitchell; it was in his safe until May; I took it to the United States Chemist

(Testimony of D. D. Simpson.)

for analysis, and the chemist shipped it to me in Fresno, and since that time it has been in the storeroom in this building. I purchased the bottle.

Q. From whom.

Mr. LINDSAY.—I object to that as immaterial, irrelevant and incompetent; not one of the overt acts alleged in the indictment and cannot possibly be any act in pursuance of the alleged conspiracy.

Mr. ELLIS.—A circumstance in the case and there is evidence in the case to show the conspiracy then, and it is the liquor we are dealing with; we allege they were dealing with.

Mr. LINDSAY.—You are alleging a particular conspiracy that was formed at a particular time.

The COURT.—Formed the 15th day of December, and alleged to have continued in existence to and including the return of the indictment. Objection overruled.

Mr. LINDSAY.—Exception. [46]

The witness then testified that Spratt, Burke, Gunn, Johnston, and Agents Rinckel and Emerick were present when the purchase was made.

EXCEPTION No. 14.

Q. What was said about the purchase of this liquor by you to either of these defendants, or what was said by any of the defendants concerning it, at the time?

Mr. LINDSAY.—I object to that as immaterial, irrelevant and incompetent, hearsay, and not within the issues, and no foundation laid.

(Testimony of D. D. Simpson.)

The COURT.—Exception overruled except as to the defendant English; as to him I will take it under advisement.

EXCEPTION No. 15.

The witness then testified over the said objection: We said to Lulu Johnston and George Spratt in the presence of Burke that we wanted to buy a bottle of whiskey and Lulu Johnston and George Spratt said it was genuine whiskey and they invited us to have a drink out of another bottle labelled the same. This was about 9 o'clock P. M. I bought the whiskey from Johnstone and Spratt and the money was given to Johnston by Agent Emerick.

Mr. LINDSAY.—I do not understand, if your Honor please, that this Johnston person is accused as being of these conspirators. We are certainly not bound by anything that was done by this lady in either procuring whiskey with the Johnston person, or buying whiskey. Is it a man, or woman?

A. Yes, sir.

Mr. LINDSAY.—Or buying from her.

Mr. ELLIS.—She said, your Honor, and I think without question, that she bought it from Spratt and this Johnston woman. [47] They were there at the place together.

The COURT.—Wait a minute. This indictment charges a conspiracy between these three defendants and various other persons to the Grand Jurors unknown. Johnston may have been one of those in the conspiracy. I will overrule the objection.

(Testimony of Byron White.)

Mr. LINDSAY.—Exception.

Mr. ELLIS.—I only wanted it for counsel. She said she bought it from Spratt. That is all I wanted to develop. That will be satisfactory.

Mr. LINDSAY.—None of it is satisfactory. We have objected to all of it as far as that is concerned.

EXCEPTION No. 16.

**Testimony of Byron White, for the Government.**

BYRON WHITE was then sworn on behalf of the Government and testified that he was with the Western Union Telegraph Company in Fresno. He was shown United States Exhibit No. 1 for identification (the telegram) and continued:

I believe I accepted this across the counter at the Western Union, at 9:15 P. M., January 11, 1922. I do not know the defendant Spratt; do not know him as the person from whom I received the telegram; it is part of the records of the office.

Mr. Ellis then offered the telegram in evidence.

Mr. LINDSAY.—I object to it as irrelevant, immaterial and incompetent, has not been identified nor in any manner connected with any defendant in the case, not a part of the case, not within the issues.

The COURT.—A witness testified that was the defendant Spratt's signature as I remember it.

Mr. ELLIS.—It is.

Mr. LINDSAY.—That is the extent of it. No proof that it was ever sent or received.



(Testimony of Lulu Johnston.)

The COURT.—That is for argument to the jury. I will [48] overrule the objection.

Mr. LINDSAY.—Exception.

The telegram was admitted as evidence and marked United States Exhibit No. 1.

The witness then testified that he sent the message to the operating-room by tube.

#### EXCEPTION No. 17.

#### **Testimony of Lulu Johnston, for the Government.**

LULU JOHNSTON was then sworn on behalf of the Government and was shown United States Exhibit No. 2 for identification (a bottle) and asked if she had ever seen it before. She testified that she had seen one like it when Simpson was at her place, that a man took it away, she did not know who he was; that it was brought to the house with several other bottles by Spratt.

Q. How many.

Mr. LINDSAY.—I object to that as immaterial, irrelevant, incompetent, not part of the conspiracy alleged in the indictment.

Mr. ELLIS.—One of the overt acts is that a case was delivered to Spratt's house by this defendant Burke.

The COURT.—Objection overruled.

Mr. LINDSAY.—I further object on the part of the defendant Burke that whatever the defendant Spratt may have done would not be binding on him in the present stage of the testimony.



(Testimony of Lulu Johnston.)

The COURT.—I will reserve my ruling as to him.

Mr. LINDSAY.—And English also?

The COURT.—Yes, sir. I might submit the whole matter to the jury under instructions.

The witness then testified that there were 12 bottles brought to the house, all filled, and that one was sold to Simpson. That for about a week, Spratt, Simpson and Parker talked about liquor. Witness was then asked for the gist of the conversation with Spratt about liquor. [49]

Mr. LINDSAY.—I interpose the same objection heretofore interposed, immaterial, irrelevant, incompetent, not within the issues, and hearsay as to the defendants English and Burke.

The COURT.—As to Burke and English it will be taken under advisement; overruled as to Spratt.

Mr. LINDSAY.—Exception.

The witness then testified that they were still trying to get the liquor, one so much, the other so much, to get it all together and deliver it to suit themselves. Witness did not remember whether anything was said as to how it was to be procured. Spratt said he thought he could get it, do not remember if he said where. Saw Burke there on the night of the 13th. Saw English brought in by the officers. She did not hear any conversation about a telegram or a message. Simpson told me to ask Spratt if he had ordered the liquor. He said he had.

(Testimony of Lulu Johnston.)

EXCEPTION No. 18.

Mr. Ellis then offered in evidence United States Exhibit No. 2 (a bottle) for identification.

Mr. LINDSAY.—I object to that as immaterial, irrelevant, incompetent, has not been identified, and not within the issues of this case.

The COURT.—Overruled.

Mr. LINDSAY.—Exception.

The bottle was received in evidence and marked United States Exhibit No. 2.

I saw a very large dish-pan full of bottles, about the size of exhibit No. 2, of liquor which one of the officers brought into the house the night of the raid; the bottles were wrapped in paper; defendants Burke and English were there at that time.

The witness Parker was then recalled by the plaintiff. [50]

He identified a certain written instrument as having been read and signed in his presence by George A. Spratt.

Mr. ELLIS.—I offer paragraph two and the last paragraph of the affidavit, signed by Mr. Spratt.

Mr. LINDSAY.—I object to it as immaterial, irrelevant, incompetent, not within the issues, and not binding on the defendant Burke or the defendant English.

The COURT.—Objection sustained as to English and Burke.

Mr. ELLIS.—I offer this paragraph 4. I will mark it paragraph A and paragraph B.

Thereupon a portion of an affidavit marked A and B signed by defendant Spratt was received in evidence as United States Exhibit No. 4; said exhibit reads as follows:

“On or about December 15, 1921, I ordered a case of ‘Old Crow’ whiskey from John English, *alias* Jack Kelley, which he delivered to me on that day. I first met English in the Pioneer Bar, where he gave me a drink. That was along about December 15, 1921. Later C. A. Burke called me over the phone and asked me to come to his office. When I arrived at Burke’s office English was there and offered me some more of the whiskey. After drinking it he asked me if I could handle some of it. I asked him how much it was and he made a price of \$115.00 per case. I told him that I could not pay that much, but would like to get a bottle. He refused to sell less than a case, and after talking it over with Burke, I took a case, Burke agreeing to let me have the money to make the purchase. It was understood that it was to be taken to my house and as Burke wanted a bottle he was to come down and get it. He was to give me credit for whatever he took under this arrangement.”

Paragraph B reads:

“After the dinner party on this day, and after Judge Irving had departed from the house, I had a long conversation with D. D. Simpson, then known to me as Irene Conlan,

(Testimony of T. J. Nicely.)

and George Parker, now know to me as a Special Agent of the Bureau of Internal Revenue. During this conversation arrangements were made whereby I was to act as an agent in the securing of ten cases of whiskey and ten gallons of alcohol. This liquor was to be secured from John English, *alias* Jack Kelley, and to secure same I wired to San Francisco to John English, 745 Market Street, such telegram reading as follows:

‘Can use ten shares of stock Friday’ and signed ‘Spratt.’

It was previously agreed between English and myself that in case I ordered whiskey I was to send a telegram reading in that way.”

[51]

Mr. LINDSAY.—To which I object on the ground that it is incompetent, immaterial, and irrelevant, not within the issues and not binding on the defendants English or Burke, or either of them, in any manner.

The COURT.—Objection sustained as to English and Burke.

**Testimony of T. J. Nicely, for the Government.**

T. J. NICELY was called and sworn on behalf of the plaintiff and testified that he was a Federal Prohibition Agent, that the collection of bottles shown him was taken by him from an Essex Roadster car in the garage at the rear of 631 “O” Street; that he saw Burke, Spratt and English there; that

(Testimony of T. J. Nicely.)

there was a certificate of registration on the car; identified the certificate; saw it first in the car on the 13th of January.

The certificate was then offered and received in evidence by the Government as a document found in the car in which the liquor was found on the premises of Spratt.

The objection of defendants to the evidence was sustained as to Burke but was overruled as to Spratt and English.

The certificate was marked Government's Exhibit No. 5, which showed that the said Essex car was registered in the name of the defendant, John English, with the Motor Vehicle Department of the State of California.

Witness identified one of the bottles shown him as one taken from the said Essex car. It was offered in evidence as United States Exhibit No. 6

Mr. LINDSAY.—Objected to as incompetent, immaterial, irrelevant, not within the issues; there has been no evidence of any conspiracy as alleged in the indictment. I also object on behalf of the defendant Burke that the testimony is not in any way binding on him. [52]

The COURT.—Objection overruled as to all defendants.

Mr. LINDSAY.—Exception.

The bottle was received and marked Exhibit No. 6. Concerning Exhibit No. 6 witness Nicely testified that its alcoholic content was fifty-five per cent by volume and that it was in the same condition as



(Testimony of T. J. Nicely.)

when taken from the said Essex car on January 13, 1922.

EXCEPTION No. 19.

Mr. ELLIS.—I offer these bottles in evidence, your Honor.

Mr. LINDSAY.—I object to the introduction as immaterial, irrelevant, incompetent, no evidence here of any conspiracy, and I particularly object as far as the defendant Burke is concerned that there is no testimony binding upon him in the present stage of the testimony.

The COURT.—Objection overruled.

Mr. LINDSAY.—Exception.

The bottles were received and marked United States Exhibit No. 7. Said exhibit consisted of 184 bottles of alcoholic liquor which had been found in and moved from the said Essex car by the witness. Witness further testified that before and after removing said bottles from said automobile he saw defendants Spratt, Burke and English at No. 631 "O" Street on the night of January 13, 1922.

The plaintiff, reserving the right to introduce evidence of the delivery of the telegram, rested.

Mr. Lindsay, on behalf of the defendants, moved the Court to strike out all the testimony which has been received as to overt acts alleged in the indictment on the ground that there has been absolutely no evidence here of any conspiracy, only evidence of alleged overt acts. [53]

Mr. Ellis argued the case for the plaintiff.



(Testimony of Sheldon Hunter.)

The COURT.—Well, the case against Burke will be dismissed.

**Testimony of Sheldon Hunter, for the Government  
(Recalled).**

SHELDON HUNTER was recalled by Government and testified:

That he had the office records with him; that he had a water copy of the message as received from Fresno addressed to John English, 745 Market Street, care of Golden Rule, San Francisco, reading "Need ten shares of stock Friday," signed "Spratt." The message left Fresno at 9:15 routed 9:28; notice left 9:30; returned 9:41; sent out a second time at 10:06 delivered at 10:10 to a man named H. Hahn. That investigation showed that H. Hahn had been an employee of the Golden Rule at that time, that he had left there several months ago, and his present location was unknown.

That there was no part of the record that showed that John English had ever received the telegram. It was thereupon stipulated that the telegram United States Exhibit No. 1, was sent from Fresno to San Francisco.

Both sides rested.

The Court then instructed the jury.

The jury retired and returned to court with a verdict finding the defendants John English and George A. Spratt guilty as charged in the indictment.

## EXCEPTION No. 20.

Mr. BURGESS.—If your Honor please, I make a motion for a new trial on behalf of the defendant on the ground that the verdict is not supported by the evidence, the verdict is against the evidence, errors of law committed at the trial; and the admission of evidence over the objection of the defendant English.

The COURT.—The motion will be overruled.  
[54]

Mr. BURGESS.—I also make a motion for the arrest of judgment on the ground that the indictment does not state an offense against the laws of the United States, there is no evidence of any overt act introduced in support of the allegations of conspiracy, and errors of law committed at the trial.

The COURT.—Motion overruled.

Mr. BURGESS.—Exception to both rulings, please. [55]

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In the District Court of the United States, for the  
Southern District of California, Northern  
Division.

No. 588—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH, *alias* JOHN KELLY,  
GEORGE A. SPRATT, C. A. BURKE,  
Defendants.

**Order Settling Engrossed Bill of Exceptions.**

And now at this time the above-entitled cause coming on to be heard upon settlement of the engrossed bill of exceptions herein, and the Court being willing that if any error hath been committed the same be corrected, and that speedy justice be done the defendant herein, the Court does hereby certify that the foregoing engrossed bill of exceptions contains all of the testimony offered and admitted upon trial of said cause in support of the charge of conspiracy and the overt acts alleged in the indictment herein; and it also contains all of the testimony and material facts relative to and illustrative of the foregoing exceptions, and it also contains the objections made to all of said testimony and the rulings of the Court thereon and the exceptions taken thereto, and it also contains all of the matters had and done and proceedings taken relative to the matters contained in said bill [56] of exceptions; and it also contains all of the motions made by said defendant during the trial of said cause and the rulings of the court thereon and the exceptions taken thereto, all of which said exceptions were duly allowed; and all of the proceedings relative and pertaining to said motions; that said engrossed bill of exceptions was prepared and submitted within the time allowed by law and the order of the Court, and is now signed, sealed and settled as and for the engrossed bill of exceptions in said cause, and the same is hereby ordered to be

made part of the record on writ of error in said cause.

IN WITNESS WHEREOF, I have hereunto set my hand and the official seal of said court this 27th day of January, 1923.

TRIPPET,

United States District Judge.

[Endorsed]: No. 588—Criminal. In the District Court of the United States, for the Southern District of California, Northern Division. United States of America, Plaintiff, vs. John English et al., Defendants. Engrossed Bill of Exceptions of Defendant, John English, and Order Settling Engrossed Bill of Exceptions. Filed Jan. 31, 1923, at — min. past — o'clock. M. Chas. N. Williams, Clerk. By Murray E. Wire, Deputy. Thomas & Sullivan, Attorneys at Law, Humboldt Bank Building, San Francisco. Telephone Sutter 752. [57]

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In the District Court of the United States in and for the Southern District of California, Northern Division.

No. —.

UNITED STATES OF AMERICA

vs.

JOHN ENGLISH, *alias* JOHN KELLY, GEORGE SPRATT, et al.,

Defendants.

**Stipulation Re Bill of Exceptions.**

It is hereby stipulated and agreed that the time for filing his draft of his proposed bill of exceptions by the defendant, John English, is extended for the period of ten days from June 19, 1922.

Dated June 19th, 1922.

JOSEPH C. BURKE,  
United States Attorney.

W. C. BURGESS,  
Attorney for Defendant, John English.

It is so ordered—6-19-22.

TRIPPET,  
Judge.

[Indorsed]: No. 588—Cr. In the District Court of the United States for the Southern District of California, Southern Division. United States of America, Plaintiff, vs. John English, *alias* John Kelly, George Spratt, et al., Defendant. Stipulation. Filed Jun. 19, 1922, at — min. past — o'clock — M. Chas. N. Williams, Clerk. By Louis J. Somers, Deputy. [58]

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At a stated term, to wit, the May Term, A. D. 1922, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Thursday, the 6th day of July, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

GEORGE A. SPRATT et al.,

Defendants.

**Minutes of Court—July 6, 1922—Order Extending  
Time Fifteen Days to File Bill of Exceptions.**

Upon *ex parte* motion of John R. Layng, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, it is by the Court ordered that defendant herein be granted a fifteen day stay of execution of sentence to serve and file proposed amendments to bill of exceptions. [59]

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At a stated term, to wit, the November Term, A. D. 1922, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the courtroom thereof, in the city of Fresno on Saturday the 11th day of November, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH et al.,

Defendants.



**Minutes of Court—November 11, 1922—Order Extending Time Thirty Days to File Bill of Exceptions.**

On the telegraphic request of M. A. Thomas, Esq., and with the consent of Mac Meader, Esq., Assistant United States Attorney, it is now hereby ordered that the May Term, A. D. 1922, be and the same hereby is extended thirty (30) days for the purpose of settling the bill of exceptions of the defendant John English herein, and for making all motions necessary to be made within the term.  
[60]

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At a stated term, to wit, the November Term, A. D. 1922, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the courtroom thereof, in the city of Fresno, on Friday, the 8th day of December, in the year of our Lord one thousand nine hundred and twenty-two. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH, *alias*, etc., et al.,

Defendants.

**Minutes of Court—December 8, 1922—Order Extending Time Thirty Days to File Bill of Exceptions.**

A request having been made for an extension of time within which to file the bill of exceptions in this cause, having been received; H. N. Ellis, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, and not opposing said request for extension, the Court thereupon granted said request for extension of 30 days from date hereof, within which to settle bill of exceptions and also to make all or any necessary motions or orders that may be made within the term. [61]

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At a stated term, to wit, the November Term, A. D. 1922, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles, on Friday, the 5th day of January, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH, *alias*, etc.,

Defendant.

**Minutes of Court—January 5, 1923—Order Extending Time Fifteen Days to File Bill of Exceptions.**

A request having been made for an extension of time within which to file the bill of exceptions in this cause, having been received; H. N. Ellis, Esq., Assistant U. S. Attorney, appearing as counsel for the Government, and not opposing said request for extension, the Court thereupon granted said request for extension of fifteen (15) days from date hereof, within which to settle bill of exceptions and also to make all or any necessary motions or orders that may be made within the term. [62]

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At a stated term, to wit, the November Term, A. D. 1922, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles on Monday, the 22d day of January, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable BENJAMIN F. BLEDSOE, District Judge.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH,

Defendant.

**Minutes of Court—January 22, 1923—Order Extending Time One Day to File Bill of Exceptions.**

Good cause appearing therefor, it is by the Court ordered that the time to file proposed bill of exceptions be extended for one day. [63]

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At a stated term, to wit, the November Term, A. D. 1922, of the District Court of the United States of America, within and for the Northern Division of the Southern District of California, held at the courtroom thereof, in the city of Los Angeles on Tuesday, the 23d day of January, in the year of our Lord one thousand nine hundred and twenty-three. Present: The Honorable OSCAR A. TRIPPET, District Judge.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH,

Defendant.

**Minutes of Court—January 23, 1923—Order Extending Time Five Days to File Bill of Exceptions.**

At the request of H. N. Ellis, Esq., Assistant U. S. Attorney and on motion of Mark L. Herron,

Esq., Assistant United States Attorney, it is by the Court ordered that the time be extended for five days to file proposed bill of exceptions herein.  
[64]

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In the District Court of the United States, for the  
Southern District of California, Northern  
Division.

No. 588—CRIMINAL.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH, *alias* JOHN KELLY, GEORGE  
A. SPRATT, C. A. BURKE,

Defendants.

**Praeceptum for Transcript on Writ of Error.**

To the Clerk of said Court:

Sir: Please prepare and forward to the clerk of the United States Circuit Court of Appeals for the Ninth Circuit the following record on writ of error in the above-entitled matter:

1. The indictment;
2. Plea of defendant English;
3. Minutes of the trial;
4. The verdict;
5. Petition for writ of error;
6. Assignment of errors;
7. Writ of error;
8. Order fixing bond on writ of error;
9. Citation;

10. Bill of exceptions with order settling same;
11. Orders extending time within which to file and settle bill of exceptions;
12. Authentication of record; [65].
13. Praecipe for transcript on writ of error.

Dated April 19, 1923.

M. A. THOMAS,  
CHAS. C. SULLIVAN,

Attorneys for John English, Plaintiff in Error.

[Indorsed]: No. 588—Criminal. In the District Court of the United States, for the Southern District of California, Northern Division. United States of America, Plaintiff, vs. John English, etc., et al., Defendants. Praecipe for Transcript on Writ of Error. Received copy of within praecipe for transcript on April 23, 1923. Herbert N. Ellis, Special Asst. U. S. Atty. Filed Apr. 23, 1923. Chas. N. Williams, Clerk. By Chas. V. Rude, Deputy Clerk. Thomas & Sullivan, Attorneys at Law, Humboldt Bank Building, San Francisco. Telephone Sutter 752. [66]

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In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH,

Defendant.



**Certificate of Clerk U. S. District Court to Transcript of Record.**

I, Chas. N. Williams, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 66 pages, numbered from 1 to 66 inclusive, to be the transcript of record on writ of error in the above-entitled cause as prepared by the plaintiff in error, and presented to me for comparison and certification, and that the same has been compared and corrected by me, and contains a full, true, and correct copy of the judgment-roll, petition for writ of error, order fixing amount of bond on writ of error, assignment of errors, engrossed bill of exceptions, stipulation extending time to file bill of exceptions and minute orders extending time to file bill of exceptions, and praecipe for transcript on writ of error. Said record also contains the original citation and original writ of error.

I DO FURTHER CERTIFY that the fees of the clerk for comparing and correcting the foregoing record on writ of error amount to \$18.65, and that said amount has been paid me by the plaintiff in error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this first day of May, in the year of our Lord one [67] thousand nine hundred and twenty-three, and of

our Independence the one hundred and forty-seventh.

[Seal]

CHAS. N. WILLIAMS,  
Clerk of the District Court of the United States of  
America, in and for the Southern District of  
California, Southern Division.

By R. S. Zimmerman,  
Deputy Clerk. [68]

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[Endorsed]: No. 4024. United States Circuit  
Court of Appeals for the Ninth Circuit. John Eng-  
lish, Plaintiff in Error, vs. The United States of  
America, Defendant in Error. Transcript of Rec-  
ord. Upon Writ of Error to the United States  
District Court of the Southern District of Califor-  
nia, Southern Division.

Filed May 7, 1923.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.

In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. 4024.

JOHN ENGLISH,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Extending Time to and Including May 7,  
1923, to File Record and Docket Cause.**

Upon the application of M. A. Thomas, representing W. C. Burgess, attorney of record for the plaintiff in error herein, and good cause therefor appearing, it is ORDERED that the time within which the above-named plaintiff in error may file the record and docket cause in the above-entitled cause herein be, and the same is, extended and enlarged to and including the 7th day of May, 1923.

Dated April 21, 1923.

W. H. HUNT,  
Circuit Judge.

[Endorsed]: No. 4024. In the United States Circuit Court of Appeals for the Ninth Circuit. John English, Plaintiff in Error, vs. United States of America, Defendant in Error. Order Enlarging Time Within Which to File Record and Docket Cause. Filed Apr. 21, 1923. F. D. Monckton, Clerk. Refiled May 7, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

10. Bill of exceptions with order settling same;
11. Orders extending time within which to file and settle bill of exceptions;
12. Authentication of record; [65].
13. Praecept for transcript on writ of error.

Dated April 19, 1923.

M. A. THOMAS,  
CHAS. C. SULLIVAN,

Attorneys for John English, Plaintiff in Error.

[Indorsed]: No. 588—Criminal. In the District Court of the United States, for the Southern District of California, Northern Division. United States of America, Plaintiff, vs. John English, etc., et al., Defendants. Praecept for Transcript on Writ of Error. Received copy of within praecipe for transcript on April 23, 1923. Herbert N. Ellis, Special Asst. U. S. Atty. Filed Apr. 23, 1923. Chas. N. Williams, Clerk. By Chas. V. Rude, Deputy Clerk. Thomas & Sullivan, Attorneys at Law, Humboldt Bank Building, San Francisco. Telephone Sutter 752. [66]

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In the District Court of the United States, in and for the Southern District of California, Southern Division.

No. 588—CRIM.—N. D.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHN ENGLISH,

Defendant.

**Certificate of Clerk U. S. District Court to Transcript of Record.**

I, Chas. N. Williams, Clerk of the United States District Court for the Southern District of California, do hereby certify the foregoing volume containing 66 pages, numbered from 1 to 66 inclusive, to be the transcript of record on writ of error in the above-entitled cause as prepared by the plaintiff in error, and presented to me for comparison and certification, and that the same has been compared and corrected by me, and contains a full, true, and correct copy of the judgment-roll, petition for writ of error, order fixing amount of bond on writ of error, assignment of errors, engrossed bill of exceptions, stipulation extending time to file bill of exceptions and minute orders extending time to file bill of exceptions, and praecipe for transcript on writ of error. Said record also contains the original citation and original writ of error.

I DO FURTHER CERTIFY that the fees of the clerk for comparing and correcting the foregoing record on writ of error amount to \$18.65, and that said amount has been paid me by the plaintiff in error herein.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed the seal of the District Court of the United States of America, in and for the Southern District of California, Southern Division, this first day of May, in the year of our Lord one [67] thousand nine hundred and twenty-three, and of

our Independence the one hundred and forty-seventh.

[Seal]

CHAS. N. WILLIAMS,  
Clerk of the District Court of the United States of  
America, in and for the Southern District of  
California, Southern Division.

By R. S. Zimmerman,  
Deputy Clerk. [68]

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[Endorsed]: No. 4024. United States Circuit  
Court of Appeals for the Ninth Circuit. John Eng-  
lish, Plaintiff in Error, vs. The United States of  
America, Defendant in Error. Transcript of Rec-  
ord. Upon Writ of Error to the United States  
District Court of the Southern District of Califor-  
nia, Southern Division.

Filed May 7, 1923.

F. D. MONCKTON,  
Clerk of the United States Circuit Court of Appeals  
for the Ninth Circuit.

By Paul P. O'Brien,  
Deputy Clerk.



In the United States Circuit Court of Appeals for  
the Ninth Circuit.

No. 4024.

JOHN ENGLISH,

Plaintiff in Error,

vs.

UNITED STATES OF AMERICA,

Defendant in Error.

**Order Extending Time to and Including May 7,  
1923, to File Record and Docket Cause.**

Upon the application of M. A. Thomas, representing W. C. Burgess, attorney of record for the plaintiff in error herein, and good cause therefor appearing, it is ORDERED that the time within which the above-named plaintiff in error may file the record and docket cause in the above-entitled cause herein be, and the same is, extended and enlarged to and including the 7th day of May, 1923.

Dated April 21, 1923.

W. H. HUNT,

Circuit Judge.

[Endorsed]: No. 4024. In the United States Circuit Court of Appeals for the Ninth Circuit. John English, Plaintiff in Error, vs. United States of America, Defendant in Error. Order Enlarging Time Within Which to File Record and Docket Cause. Filed Apr. 21, 1923. F. D. Monckton, Clerk. Refiled May 7, 1923. F. D. Monckton, Clerk. By Paul P. O'Brien, Deputy Clerk.

